

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC SAFETY

Call to Order: By **CHAIRMAN STANLEY (STAN) FISHER**, on January 30,
2003 at 8:09 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Rep. Stanley (Stan) Fisher, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Keith Bales (R)
Rep. Tim Callahan (D)
Sen. Trudi Schmidt (D)
Rep. Dave Lewis (R)

Members Excused: Rep. Carol C. Juneau (D)

Members Absent: None.

Staff Present: Pamela Schindler, Committee Secretary
Christi Moyer, OBPP
Lorene Thorson, Legislative Branch

Please Note: The time stamp for these minutes appears at the end
of the content it refers to. These are summary minutes.
Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: Department of Justice,
Montana Highway Patrol, Centralized
Services, County Attorney Payroll
1/27/2003
Executive Action: None

CHAIRMAN FISHER opened the hearing by having **Mike McGrath Attorney General, State of Montana, Department of Justice (DOJ)**, speak with the Committee about the Crime Lab Bill previously heard. **Mr. McGrath** stated that he feels the bill needs more time. The DOJ received \$100,000 just yesterday from a federal grant that allows **DOJ** to buy two electron microscopes which put them in good shape as to equipment. **Mr. McGrath** would prefer law enforcement to have consensus as to how to deal with the equipment in the labs.

CHAIRMAN FISHER queried whether the sub-committee should pass a bill and make it effective the next biennium, if that would help. He further stated that "things have a way of dying a natural death" if left alone and the Committee wants to help the lab. **Mr. McGrath** responded by saying that if a bill was put together, that would give a starting place to begin the discussion. **SEN. BALES** asked **REP. LEWIS** if a special fund would have to be set-up, with **REP. LEWIS** responding in the affirmative. He further stated that a special fee would be set up and the funds derived from that would be put in HB 2 and then that money would be appropriated.

CHAIRMAN FISHER asked why the fees from autopsies haven't been kept. **Mr. McGrath** responded by saying that when they do autopsies if they charge for them, the money goes into the General Fund. **CHAIRMAN FISHER** stated that he was told an amount of \$650 is charged but that goes back into the General Fund. **Mr. McGrath** said, "I'm not sure if we charge for every autopsy, I think (he) charges for non-criminal related autopsies." He further stated that if it is a homicide or a criminal investigation then there is no charge. **SEN. BALES** inquired whether a bill like HB 577 would "set in motion" the process needed, while **Mr. McGrath** responded that either way would facilitate that. This bill would decide who would pay the fee, how to impose a fee, what types of cases etc.

CHAIRMAN FISHER wondered if there would be a dramatic increase, due to a problem of overuse. **Mr. McGrath** said that there is a "triage" system for cases and what is sampled. **SEN. STAPLETON** asked if some people have to pay and others don't. He also asked what about the people who can afford to pay and others can't; and whether those people get lost in the system. **Mr. McGrath** responded by saying that by law they are required to do sampling for defense if there is a request. In this legislative session there is a bill that addresses the post-conviction DNA testing.

Lorene Thorson, Legislative Staffer, informed the Committee that she didn't know what the Committee wanted so she looked at the

number of cases last year (2002). The number of cases last year were 5,038 and if a flat fee were charged, that would generate over \$100,000 per year.

CHAIRMAN FISHER suggested that the Committee postpone this matter for between now and the end of February and at the same time they will get together with DOJ. **SEN. STAPLETON** requested the Committee be supplied with information pertaining to the list of fees, cycle per year as to number of cases from the defense and the State of Montana. He also asked if a Fiscal Note could be provided.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 14.1}

Public Testimony from the Montana Highway Patrol

Colonel Shawn Driscoll, Chief Administrator, Montana Highway Patrol, introduced himself and distributed to the Committee his written testimony and two hand-outs. See those hand-outs for specific information and detail. They may be referred to in the proceeding minutes and testimony.

EXHIBIT(jch20a01)

EXHIBIT(jch20a02)

EXHIBIT(jch20a03)

{Tape: 1; Side: A; Approx. Time Counter: 14.1 - 31}

Col. Driscoll informed the Committee that this budget maintains our current level of service. The largest budget items are personnel, per diem per vehicle, also gasoline and maintenance. There are three distinct budget programs: Operations, Recruits School and Motor Carrier Safety Assistance Program. He proceeded to explain to the Committee the details of these programs (refer to Exhibits 1 & 2).

CHAIRMAN FISHER inquired as to why the amount is included in the budget as it is a "pass through" item. He referred to special overtime amount of \$154,000. **Ms. Thorson** answered that it has to be for accounting purposes. **Jesse Monroe, Montana Highway Patrol**, explained further that in the LFD analysis, our request appears to be increase of \$472,550. But budgeting for overtime is a zero-based item and our request is to maintain that level. He further explained the correlation between overtime and the Gas Tax Fund.

Col. Driscoll then explained the prisoner per diem handout. This is the only area that is budgeted out of the General Fund.

Cost per day is negotiated between the DOC and each county. Low end is \$32 to \$86 high end. There is no control of the costs, insofar as to how long judges sentences a person to be in jail. The patrol is responsible for those costs if they come in contact with those persons. There was an average of 7% increase in costs last year. Also judges appear to be taking offenses more seriously and so are sentencing people to longer periods of time. Average stay is 7.8 days, with the **MHP** being charged for 8 full days. Twenty-eight percent of the time the **MHP** put someone in jail while 72% of the time was by court order. Refer to Exhibit 3.

{Tape: 1; Side: B; Approx. Time Counter: 6.3 - 9.8}

CHAIRMAN FISHER asked how many prisoner days does the MHP have to pay and if it is broken down by location. **Col. Driscoll** responded by saying that is not broken down. There is other information as to the county, prisoner costs etc. Some counties do not have information in yet. **REP. SCHMIDT** asked why some counties weren't listed in 2001 and 2002 figures. The reason for that is DOC has not worked out their contract yet. Variations were asked about and it was explained that due to the counties and DOC negotiated differently based on each county's cost due to such factor as, old facilities versus newer facilities, etc. **REP. LEWIS** asked about the large amount of inmates in the Missoula and Yellowstone facilities. **Col. Driscoll** explained that those areas have "a lot of business" and also due to them being regional facilities inmates are brought to them from outlying areas. The Committee was informed by **CHAIRMAN FISHER** that Idaho had a similar problem which was solved when they passed a statute to regulate the cost per day fees.

The **MHP** is requesting \$390,000 for additional jail costs for FY 2003. Currently our expenditure is \$110,000 per month for a total of \$1.32 million per year.

{Tape: 1; Side: B; Approx. Time Counter: 9.8 - 20.3}

REP. BALES inquired if a judge sentences someone to a 4th DUI to the DOC does the MHP get charged for that. **Col. Driscoll** explained that once convicted to DOC it would not come out of the MHP's budget. He further explained procedures and costs for pre and post convictions.

{Tape: 1; Side: B; Approx. Time Counter: 20.3 - 25}

Col. Driscoll then proceeded to talk with the Committee about gasoline costs.

The amount the MHP spent last year was \$460,970 in gas FY 2002. This was inflated to \$505,104 for FY 2004, \$527,856 in FY 2005. **CHAIRMAN FISHER** inquired about whether the gas is purchased from private vendors or bid process. The Committee was informed that gas was previously bought from DOT but now from regular vendors. One reason for that is the availability of gas for the patrolmen. There was a question as to whether it would be cheaper to buy from the DOT and not pay the 47 cent state tax. The state tax is paid but MHP is exempt from the Federal Gas Tax. The gas is bought through the fleet system set up through the State.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 30}

The gas is paid by Credit Cards from the State and when the State receives bill, the Federal Tax is already removed.

Col. Driscoll explained the additional expenses to be budgeted for: rent increases at 7 district offices, 23 detached offices and 60 radio sites for \$55,291. They also replace 1/3 of the fleet of vehicles for a total of 63 cars after they achieve 85,000-100,000 miles per year. Recruit School is the next cost with overtime pay etc. with an additional \$64,220 for biennium. The next cost is motor vehicle inspection that is funded 80% federally and 20% through a special gas tax. The amount requested is \$283,680 and is funded 100% through federal authority.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.7}

Jesse Munro, Administration Officer, Montana Highway Patrol, wanted to explain to the Committee about the LFD process and referred to the Legislative Budget Analysis Book, section on Corrections and Public Safety, page D36. While referring to that he was able to explain the executive package, retirement system, full time employees and entry-level positions.

CHAIRMAN FISHER was interested in the 21% increase in the gas prices and how that number was reached. **Mr. Munro** stated that they had an analyst predict and forecast where gas prices were to going. A question was put forth as to how accurate this forecast is with the answer being "fairly" accurate. Gas prices will be ranging from \$1.70-\$1.79 per gallon. Those figures were then used in the forecast. **SEN. SCHMIDT** wanted to know about the Executive Protection amount that is being requested. **Col. Driscoll** explained that it is for the patrolmen to travel with the Governor. They are to conduct "advance" work, threat protection when they travel with her. The patrolmen are

experienced, full time employees with experience of over 3-4 years.

Col. Driscoll believed that this service was started after September 11. Montana was previously the only state in the country without protection for their Governor.

SEN. STAPLETON inquired of **Col. Driscoll** about the concept of keeping the patrol cars for longer than three years. The Senator related that he has kept his private car since 1993, having replaced the transmission and "it is like new." **Col. Driscoll** stated that the patrol cars are replaced every three years due to the high mileage of at least 85-100,000 miles put on them each year and they are driven at high speeds, it would cost more to maintain them. The officers need to be able to trust that their vehicles will be able to do the job when needed. Also because there are fewer patrolmen, they have longer distances to drive when they are answering a call. There is only one spare car per district and each patrolman is assigned his/her own car.

{Tape: 2; Side: A; Approx. Time Counter: 6.7 - 28}

Doug Booker, (DOJ), Centralized Services, introduced himself and explained that his department manages the appropriated money and the people employed by the DOJ.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 7.7}

County Attorney Payroll

Doug Booker, DOJ, Centralized Services, introduced himself again to the Committee and proceeded to explain the County Attorney Payroll portion of the hearing.

The County Attorneys are paid by two paychecks, one from the State and one from local county government. Before this biennium budget, the salaries were shared 50-50% by each entity. The State is to pay one-half of their salaries by law, however there is also a portion of the law that states the State can only pay what is appropriated. The local counties gave raises to the County Attorneys without the State having the money appropriated to cover their share. There was a 2.2% increase for each biennium.

EXHIBIT (jch20a04)

Some counties paid the additional amount where some counties didn't, leaving their County Attorney short. **Mr. Booker** referred to a handout that showed for fiscal year 2004 the counties have

submitted a claim for \$1.8 million and for fiscal year 2005 a claim for \$1.5 million.

EXHIBIT(jch20a05)

There were then some questions as to the salaries, the raises and the fiscal impact that **Mr. Booker** answered. **REP. LEWIS** inquired as to when the 50-50% was initiated with **Mr. McGrath** answering that it started in approximately 1895. There was conversation related to this situation of the 50-50 split and how the State got themselves into this. There were different scenarios discussed on how to remedy this problem of inequity by the State, how to eliminate the disparities and to make the current situation work.

{Tape: 2; Side: B; Approx. Time Counter: 7.7 - 30}

Harold Blattie, Montana Association of County Attorneys, reported that in the previous session there was a bill tying the salaries of County Attorneys to the District Courts and that bill did not pass. He stated that in Stillwater County, their Attorney does State "business" 100% of the time.

EXHIBIT(jch20a06)

CHAIRMAN FISHER inquired as to what is the job description of the County Attorney, and isn't that what a County Attorney is supposed to do is to enforce the "law of the land." **Mr. Blattie** stated this his main areas of work are to represent the State in felony and misdemeanor cases in Justice Court, to represent the State in Child Protective Service cases and to represent the State in Special Districts when working with the Sheriff's office. **CHAIRMAN FISHER** informed the Committee that he will designate one day to resolve this situation and "if there is a bad law on the books, we need to get it off." He compared the County Attorney to the Sheriff's Office in saying that the Sheriff's job is to enforce the "law of the land" i.e. the State law, and asked what would happen if the Sheriff decided to no longer "do the State's work".

{Tape: 3; Side: A; Approx. Time Counter: 0 - 10.7}

Leo Gallagher, Lewis and Clark County Attorney, Montana Association of County Attorneys, answered **CHAIRMAN FISHER** by saying he understood the question, however, this is the situation in his office. The workload for his staff of six attorneys and eight support staff in 2001:

331 new felony cases in District Court
1000 revocation proceedings in District Court
110 Juvenile Delinquent petitions in District Court
100 Mental Health Commitments

He also explained that they provide counsel to the MHP, FWP and DPHHS. The conversation ensued with the role of the County Attorneys, enforcement and public safety issues being discussed. **CHAIRMAN FISHER** stated that the amount of pay is not the issue, what is the issue is the mechanism used to pay it.

{Tape: 3; Side: A; Approx. Time Counter: 10.7 - 18.4}

Jim Smith, Montana Association of County Attorneys, testified to the Committee that he had come up with some ideas on how to resolve this. He explained them to the Committee.

Ron Alles, Lewis and Clark County, Chief Administrator, re-emphasized the point that the amount being discussed is only half of the County Attorney's salary. The total budget in Lewis and Clark County for the County Attorney office is \$600,000. Lewis and Clark County is only asking for a reimbursement amount of \$40,000.

Mr. McGrath stated that the current system can work and that there are some other options. He explained some of them.

CHAIRMAN FISHER closed the hearing and stated that Executive Action would take place tomorrow.

{Tape: 3; Side: A; Approx. Time Counter: 18.4 - 28}

ADJOURNMENT

Adjournment: 11:01 A.M.

REP. STANLEY (STAN) FISHER, Chairman

PAMELA SCHINDLER, Secretary

SF/PS

EXHIBIT (jch20aad)